

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Nicholas Marantz	Team: Team # 5	CCRB Case #: 200408436	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 08/29/2004 6:45 PM	Location of Incident: In front of the USS Intrepid (46th Street and WS Highway)	Precinct: 18	18 Mo. SOL 2/28/2006	EO SOL 2/28/2006	
Date/Time CV Reported Sun, 08/29/2004 7:33 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Sun, 08/29/2004 7:33 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. LCD Abner Moore	00000	873768	ND CH I

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Ronald Moore	00913	922676	075 PCT
2. DT3 Luis Fernandez	07472	899202	ND CH I

Officer(s)	Allegation	Investigator Recommendation
A.LCD Abner Moore	Abuse: Lieutenant Detective Commander Abner Moore ordered § 87(2)(b) and other individuals to move.	
B.LCD Abner Moore	Abuse: Lieutenant Detective Commander Abner Moore threatened to arrest § 87(2)(b) and other individuals.	

Synopsis

§ 87(2)(b) filed a complaint with the CCRB on August 29, 2004, alleging that on that date, an officer, identified by investigation as Lieutenant Detective Commander Abner Moore, ordered her and her associates in a street theater group to move (allegation A) and threatened to arrest them (allegation B) during a protest in front of the USS Intrepid at 46th Street and the West Side Highway in Manhattan. The incident occurred during the Republican National Convention, and the case was placed on the agency's sensitive case list. § 87(2)(b), § 87(2)(g)

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§ 87(2)(b), § 87(2)(g)

Summary of Complaint

§ 87(2)(b) a § 87(2)(b)-old white female § 87(2)(b) filed a complaint with the CCRB via telephone on August 29, 2004 (enc. 3). Her brief statement was consistent with her testimony to the CCRB, detailed below.

§ 87(2)(b) was interviewed at the CCRB on September 29, 2004 (enc. 4). On the evening of August 29, 2004, § 87(2)(b) rode her bike to the USS Intrepid, where she was later joined by fellow members of a street theater group, the § 87(2)(b). Videographer § 87(2)(b) was filming the performance. § 87(2)(b) had no interaction with any officers prior to the arrival of her colleagues. § 87(2)(b) could not estimate the number of officers present at the entrance to the Intrepid when she arrived. The group had planned to perform near the USS Intrepid, where a party for delegates to the Republican National Convention (RNC) was taking place.

They started performing on the sidewalk south of the Intrepid. An officer, identified by investigation as Sergeant Ronald Moore, told the group that they needed to stand on the median, a three to four foot wide strip between a bike path and a walkway on the west side of the West Side Highway. They stood on the median and started to sing. Sergeant Moore told the group that the three male members of the group, all of whom were wearing masks, would have to remove their masks. One of the group members asked the officer whether that was true, but Sergeant Moore simply reiterated his demand that the group members remove their masks. The men complied. As they sang, a few people passed by to take pictures.

They were halfway through a song when an officer, identified by investigation as Lieutenant Detective Commander (LCD) Abner Moore, came over and told the group that they had five minutes to leave, or they would be arrested. § 87(2)(b) did not know whether LCD Moore had previously addressed the group. Somebody in the group began reciting the first amendment and LCD Moore began to look at his watch. The group then dispersed. The group had no permit and has never obtained one for a performance. Investigator Marantz explained the processes of mediation and investigation to § 87(2)(b) and she requested time to discuss these options with her colleagues. On October 8, 2004, § 87(2)(b) indicated that she wanted to mediate her complaint.

Results of Investigation

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) provided a brief telephone statement on August 31, 2004 (enc. 4.1). § 87(2)(b) a § 87(2)(b) white female, § 87(2)(b), and § 87(2)(b) a § 87(2)(b)-old white female § 87(2)(b) were interviewed at the CCRB on September 29, 2004 (enc. 5-6). The statements of § 87(2)(b) and § 87(2)(b) did not differ significantly from that of § 87(2)(b). The narrative of § 87(2)(b)'s account was substantively similar to that of the other witnesses, but he identified the subject officer as Detective Luis Fernandez.

Note: Based on the available documentary evidence and the consistency of the above statements, no additional witness or victim interviews were deemed necessary.

Officer Statements

Sergeant Ronald Moore

Sergeant Ronald Moore of the 75th Precinct was interviewed at the CCRB on October 21, 2004 (enc. 8). Because the complainant requested that the case be referred to the ADR Unit for mediation, this interview did not address allegations and was conducted to identify additional officers present at the scene.

Sergeant Moore was interviewed again at the CCRB on December 22, 2004 (enc. 9). His statements did not significantly differ from those of Lieutenant Detective Commander Moore, detailed below. Unlike LCD Moore, Sergeant Moore indicated that the protesters were asked to move so that they would be outside of the property line of the USS Intrepid, as indicated by an employee of the USS Intrepid. After viewing portions of the videotape provided by the complainants, Sergeant Moore acknowledged that he had told the protesters to remove their masks, and stated that Lieutenant Moore ordered him to tell all three male protesters to remove their masks. Sergeant Moore also acknowledged that after Lieutenant Moore told the group that they had five minutes to disperse, Sergeant Moore repeated the command. He stated that he had done so because Lieutenant Moore informed him that the group would have to disperse within five minutes.

Lieutenant Detective Commander Abner Moore

Lieutenant Detective Commander (LCD) Abner Moore of the Manhattan North Narcotics Division, Central Harlem Initiative was interviewed at the CCRB on January 25, 2005 (enc. 10). LCD Moore has been assigned to the narcotics division since 1988. On August 29, 2004, LCD Moore worked in uniform from 1:00 PM to 9:00 PM as the detail supervisor of a mobile field force assembled for the RNC. He supervised three sergeants (LCD Moore recalled only the identity of Sergeant Ronald Moore) and approximately thirty officers. His operator was Detective Luis Fernandez. The mobile field force responded to different locations as directed. At the time of the incident, LCD Moore's field force was assigned to the USS Intrepid at 46th Street and the West Side Highway, because a private function for the RNC delegates was being held there. The RNC command post had assigned the unit to the Intrepid via police radio. LCD Moore was the highest-ranking officer on the scene. No officers of equivalent rank were on the scene. While he was there, he did not receive instructions from an officer of higher rank.

His unit had been in the vicinity of the USS Intrepid for approximately one hour, when a group of five to seven protesters arrived. All but one of the protesters were wearing masks depicting political figures. The group members also wore "rocket ship[s] in their private area[s]." The protestors carried signs reading, "Dick and a Bush." They also said this phrase out loud and sang. The member of the group who was not wearing a mask, identified by investigation as § 87(2)(b) was videotaping the protest. LCD Moore initially stated that the officers did not instruct the protesters to remove their masks. After viewing a portion of the videotape provided by the complainants, LCD Moore acknowledged that he directed the sergeants to instruct the protesters to remove their masks. He recalled that the police department had issued a directive concerning groups in which three or more people were wearing masks, but he did not specifically recall the stipulations of that directive.

The protesters were standing in a pedestrian walkway or bicycle path, and bicycles could not pass. LCD Moore told the protesters that they had five minutes to disperse or they would be arrested. He thought that they would be arrested for disorderly conduct if they failed to comply, and specifically told them that they would be arrested. He stated that there was no discussion with USS Intrepid security personnel regarding the protesters. Federal agents, from an agency unknown to LCD Moore, were also present, but he did not interact with them. The federal agents did not in any way direct the response to the protest. At no time did LCD Moore learn where the property line for the USS Intrepid is located.

A few minutes passed, and some group members said that they were not obstructing pedestrian traffic. Within the allotted time, however, the group members dispersed. Upon viewing the videotape, LCD Moore acknowledged that he did not independently recall whether the group had been initially instructed to leave the premises, or back up to the median between the pedestrian walkway and the bike path bordering

the West Side Highway. On the videotape, LCD Moore is seen speaking on a cell phone. He did not remember who was on the other end of the call. He acknowledged that, as the situation appears on the videotape, once the protesters moved to the median, they were not obstructing pedestrian traffic, and he could not explain why he continued to require them to disperse.

LCD Moore claimed that prior to the portion of the incident depicted on the videotape, the protesters had been blocking the pedestrian walkway, prompting him to instruct the sergeants to tell the protesters to move back five feet. LCD Moore stated that he did not follow the subsequent movements of the protesters, and that his subsequent order for their dispersal was based on their initial position in the walkway. He acknowledged that the video shows them committing no violation once they moved to the median. He noted that the video does not show the area behind them, and that once they crossed the street, the video depicts bikes traveling back and forth on the bike path. He recalled that they were still obstructing pedestrian traffic when he gave them the final order to disperse. LCD Moore did not remember whether a large group of delegates was waiting to board the USS Intrepid at that time.

Additional Documents

A videotape of the incident, filmed and furnished by § 87(2)(b) begins with the § 87(2)(b), a group of seven females dressed in red, white, and blue spandex with three-foot-long missiles dangling from their waists, performing with three males in suits. Each male wears a mask - one of George W. Bush, one of Donald Rumsfeld, and one of Dick Cheney. The group is standing in the pedestrian walkway on the west side of the West Side Highway, in front of the USS Intrepid. One of the males performs a rope trick while the women banter in affected Texan accents. An officer identified by investigation as Sergeant Ronald Moore confers with a man in a beige shirt. (When asked to identify this man during his CCRB interview, Sergeant Moore stated that he was an employee of the USS Intrepid.) Sergeant Moore then asks the MDC to "back up to the concrete wall," apparently referring to a median that divides the pedestrian walkway from the bike path. One MDC member asks why, and Sergeant Moore replies, "Because I'm asking nicely."

An unidentified sergeant motions to the USS Intrepid and says, "Listen, listen. This is their property." The MDC begin to sing a song apparently entitled "Shop in the Name of War." As they sing, an officer identified by investigation as Lieutenant Detective Commander Abner Moore talks on a cell phone. LCD Moore walks over to Sergeant Moore and says something to him. The unidentified sergeant then says something unintelligible to the MDC. Sergeant Moore says, "You have to take off the masks. Five minutes." He specifies that all three males must remove their masks. The males comply and the MDC begin another song.

After approximately one minute, LCD Moore says, "You're holding up people walking by. Now you've got to stop." MDC member § 87(2)(b) says, "Excuse me sir, show me the people we're holding up." No blockage of pedestrian traffic is apparent from the videotape. Bicycles can be seen moving freely on the bike path. Sergeant Moore tells the MDC that they have five minutes to disperse. The MDC depart and Sergeant Moore motions to officers to escort them away. More than ten officers follow until the MDC cross the street to the east.

Civilian Conviction History

BADS name queries for starting with 1/1/01 indicate no arrests for § 87(2)(b) (enc. 12.1) and § 87(2)(b) (enc. 12.2).

Police Officer CCRB History

LCD Moore has no prior substantiated CCRB complaints in his twenty-four-year tenure (enc. 1).

Complainant CCRB History

§ 87(2)(b) has not filed additional complaints (enc. 2).

Conclusions and Recommendations

Undisputed Facts

§ 87(2)(b) and approximately ten of her associates staged a non-violent protest in front of the USS Intrepid during a party for RNC delegates. Three of the protesters were wearing masks, which they removed after Sergeant Moore ordered them to do so. Sergeant Moore directed the protesters to move to a median dividing a pedestrian walkway from a bike path. The protesters obeyed this order. LCD Moore then directed the protesters to disperse, and other officers reiterated this demand at his instruction. The protesters complied with his command and departed. LCD Moore and § 87(2)(b) both claimed that he informed the group of protesters that, if they failed to disperse, they would be subject to arrest. No such explicit threat is documented on the videotape of the incident.

Facts in Dispute

No facts in this case are disputed.

Police Officer Identification

§ 87(2)(b) identified the officer who threatened the protesters with arrest as a male in a white shirt. LCD Moore was the only officer in a white shirt on the scene and acknowledged ordering the group to disperse and threatening the group with arrest.

§ 87(2)(b), § 87(2)

[illegible]

Allegation A: Abuse of Authority – Lieutenant Detective Commander Abner Moore ordered § 87(2)(b) and other individuals to move.

LCD Moore stated that he ordered the protestors to move because he believed that they were blocking pedestrian traffic. § 87(2)(b), § 87(2)(g)

[REDACTED]

According to section 240.20(5) of the New York State Penal Law (enc. I), “A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof ... He obstructs vehicular or pedestrian traffic.” This was the statute under which LCD Moore planned to arrest the protesters if they failed to comply with his order to move. § 87(2)(g)

Intent to cause public alarm is distinct from the harmless expression of political speech. As *McKinney’s Consolidated Laws of New York* indicates, citing *People v. Lonsinger*, “Where defendants in staging anti-Vietnam war skits in presence of Christmas shopping crowds did not directly affect vehicular traffic and there was no violence or threat of violence on part of either defendants or onlooking crowds, defendants were properly exercising their rights under U.S.C.A.Const. Amend. 1” (enc. II). § 87(2)(g)

§ 87(2)(g) [REDACTED]
[REDACTED]
§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Allegation B: Abuse of Authority – Lieutenant Detective Commander Abner Moore threatened to arrest § 87(2)(b) and other individuals.

§ 87(2)(b) and LCD Moore both claimed that he threatened to arrest the protesters. The videotape shows that, at the point when § 87(2)(b) believed that LCD Moore threatened to arrest the protesters, he simply stated that the group had five minutes to disperse. § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

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